Supreme Court, U. S.
FILED
AUG 8 1980
MICHAEL RODAK, JR., CLERK

NO. 80-190

In the Supreme Court of the United States

October Term, 1980

HERMAN DIAMOND, Petitioner,

v.

UNITED STATES OF AMERICA AND
ET AL. Respondent,

v.

UNITED STATES OF AMERICA and

UNITED STATES ARMY CORPS OF
ENGINEERS, Savannah, Ga., Respondent,

v.

Dr. FREDRICK C. MARLAND,
State of Georgia, ET AL,
Respondent,

PETITION FOR CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

HERMAN DIAMOND, pro se
3610 Macceo Dr.
Savannah, Ga. 31410

QUESTIONS PRESENTED

The questions presented are:

1. Has the Court of Appeals, Fifth Circuit, decided an important question of Federal Law in conflict with applicable State laws and Compact between the Federal Government and the State of Georgia in a way that should be settled by this Court.

   Petitioner's State and Constitutional Rights and Immunities have been violated pursuant to Articles 4,5, 6, 10, and 14 and the 1802 Compact, are in Conflict with applicable decisions of this Court, in Oregon v. Corvallis Sand and Gravel Co., 50 L.Ed. 2d 550, 97 Sct. (1977).

2. Have the Lower Courts departed from accepted and usual course of Judicial proceedings, so as to call for the exercise of this Honorable Court's Power of Supervision, where the District Court refused to recuse and denied Petitioner his right's to a fair trial without Bias and Prejudice, pursuant to 28 U.S.C.§144; and continue to hear the three cases over objections of Petitioner.

3. Has the Lower Court departed from accepted and usual course of Judicial Proceedings so as to call for this Court's Power of Supervision, when a U.S. Assistant District Attorney, Mr. Lamar Walters, of the Southern District of Georgia files his own

personal, unsworn Civil Complaint, CA 3092, without Statutory provisions of law; abused his power of office, and personally prosecute Petitioner for an assumed violation of a Federal statues; and, instigated Federal and State employees to testify without the power of subpoena to secure a fraudulent permanent injunction over Petitioner's property in violation of Articles 4,5,6,7, and 14, and without a jury, trial as guaranteed by the Article 7 of the Constitution, with intent to harm and damage Petitioner, United States v. Cohen, 38 (App.D.C. 123 (1912).

4. Has the Court of Appeals, Fifth Circuit, departed from accepted and usual course of Judicial procedure, so as to call for the exercise of this Honorable Court's Supervision.

The Court of Appeals has affirmed all three causes of action based on a vacated Judgment in U.S. v. Diamond, 512 F.2d.157, Cert. denied, 422 U.S. 928 (1975); WHEREAS, as by consolidation, a new cause of action requires a new verdict and Judgment,

WHEREAS, in Case No. CA 3092, no new Judgment was ordered, the Court of Appeals has no jurisdiction to reinstate the old judgment in all three Causes of Actions -

Mutual Life Insurance Co. v. Hillmon, 145 U.S. 709, 710 36 L. Ed.2d. (1891) [Headnote at 293, 294]

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IN THE

Supreme Court of the United States

October Term, 1980

HERMAN DIAMOND, Petitioner

versus

No. 78-2969 - United States of America and U. S. Army Corps of Engineers, Savannah Division, ET AL,
Respondent.

No. 79-2942 - HERMAN DIAMOND, Petitioner

versus

Dr. Fredrick Marland,Colonel Edwin Kaiser,Colonel Frank Walter,Stevan Osvold,William W.Young,Edward Myatt Glenn F. MaCauley.et al. Respondent.

PETITION ON WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner seeks certiorari to review a judgment of the Court of Appeals for the Fifth Circuit and in support of its petition respectfully shows:

OPINION BELOW AND JURISDICTION

The three Cases, CA 3092 - CV 475-221 and CV-477-80, being interrelated was tried before the late Honorable Judge Alexander A. Lawrence, United States District Court, Southern District of Georgia, who entered his Order, to deny all motions in CA 3092,

and CV 475--221 on August 2, 1978,also issued a Judgment for the Army Corps of Engineers on August 2, 1978. In CV-477-80, Summary Judgment was issued on July 20, 1979.

The Court of Appeals Fifth Circuit rendered its opinion in all three cases April 28, 1980; per curuim (Not to Be Published), and on rehearing by Government Petition, rearranged the wording to issue a new opinion on June 24, 1980; WHEREAS, Petitioner's motion for rehearing was denied May 23, 1980.

Jurisdiction 28 U.S.C. 1254(1)

STATUE'S INVOLVED

28 U.S.C. §1345, 28 U.S.C.§ 1331, 28 U.S.C. § 1343(3), 42 U.S.C. §1983, 42 U.S.C. §1985(3), 33 U.S.C. §403; 407

STATEMENT OF CASE

Petitioner Herman Diamond of Savannah, Georgia, owner of Lot 50, Riverside Subdivision, having 100 foot frontage on the Road, with a depth of 225 feet to the Banks of Richardson Creek, and Warranty Deed to the lower water mark - exactly one-half acre of High Ground.

In June, 1965, Petitioner applied for and received a Corps permit to build a dock and 40 ft. walkway over the Banks

to the High Ground, where in 1966, a deep well and electrical service was supplied.

Petitioner, in 1966, then applied for a dockhouse and a bulkhead and fill to protect the dock and dockhouse. Col. Ramee, District Engineer and Chief of Permits Mr. Blitch, informed Petitioner that a permit was not required and to go ahead.he was covered,. On April 4, 1973, while Petitioner was burying the burnt debris from repairing his dockhouse and dock, which was destroyed by fire in January of 1973.

Dr. Fredrich Marland, of the Georgia State Game and Fish Division, arrived and accused Petitioner of filling the marsh area adjoining Petitioner's property, belonging to Mr. Barrett, who had applied for a permit from the Corps in June 1972. and recieved the permit in May 4,1974. Dr. Marland cursed, whereas, Petitioner informed Dr. Marland his official status was not to harrass and trespass on private property without a warrant. This infuriated Dr. Marland and he had Petitioner arrested for a State Marshland Act of 1970, by two County Police and the State Rangers, that he had called by radio.

On arraignment at the County Courthouse, Mr. Lamar C. Walter, the U.S. Assistant District Attorney was present and made several remarks and the Judge ordered him to leave, since he was not a party to the arrest.

On April 5, 1973, the next day...

Mr. Lamar filed a Civil Complaint CA 3092, for Federal violations of 33 U.S.C. §403,

and 407, Jurisdiction invoked - 28 U.S.C. §1345, (App.4, 5, 6, 7(a), based on the arrest of Petitioner for the State Marshland Act. Petitioner demurred all charges.

On January 22, 1974, Petitioner was tried in Superior Court and a jury of 12, after visiting the site, found Petitioner "NOT GUILTY" of the State Marshland Act (Dx. #25, 8/24/77). Dr. Marland testified that Diamond may have pushed a wheelbarrow of dirt into the adjoining marsh.

The District Court was informed by personal interview with Petitioner.

On March 26, 1974, Permit was denied and based on the denial the District Court issued its Judgment (App. 20, 21(a) on April 17, 1974.

U. S. v. Diamond, 512 F.2d.157, Cert. Denied; 423 U.S. 928 - (5th Cir. 1975) (App. 20, 21(a); on August 28, 1975, Petitioner filed a complaint against the United States of America and the U.S. Army Corps of Engineers, Civil Action pursuant to 5-U.S.C. §702-706, for denial of a permit to bulkhead and a small fill area, alleging that Denial of his permit was (a) arbitrary, (b) capricious, (c) in excess of Corps' Statutory authority, (d) without jurisdiction.

On December 4, 1975, the District Court ordered consolidation of CA 3092 and CV 475-221, pursuant to rule 42(a) of the F.R.C.P. (app. 8a). In the Case of Consolidation CA 3092, the State of Georgia is not a party.

On April 13, 1976, Petitioner filed a motion pursuant to rule 60(b) of the F.R.C.P. (3) that the Court had no Jurisdiction; (4) Fraud; (6) and further relief of the Court - Petitioner amended this motion on June 2, 1976, and June 28, 1977.

On April 17, 1976, a hearing was held to introduce evidence and to have Colonel Kaiser, District Engineer of the Corps, to testify, as he was being transferred overseas.

On April 17, 1977, Petitioner, DIAMOND, filed a Civil Rights and Tort Action against Defendants, DR. FREDRICH MARLAND, STATE OF GEORGIA, ET AL, CV 477-80, in Court of Appeals No. 79-2942, pursuant to 42 U.S.C. 1983 and 1985(3) and 28 U.S.C. 1331 and 1343(3) and Petitioner filed several motions in the interum:

1. Motion for review of Rule 60B (3)(4)(6) F.R.C.P.

2. Motion for an Agency hearing, 28 U.S.C.§556, et seg.

3. Rule 34, F.R.C.P. and a Freedom of Information Act 28 U.S.C.§552.

4. Summary Judgment or Jury Trial.

5. District Engineer has no authority to deny permit.

6. Motion to rescuse Judge Alexander A. Lawrence from presiding at the trials, purusant to 28 U.S.C.§144.

On June 11, 1977, file for petition to the Corps of Engineers, Savannah Division, pursuant to 5 U.S.C.§552 for all copies of Petitioner Diamond's records and correspondence pertaining to his application for a Petition filed an Oral Motion for damages of $500,000.00, in CA 3092 and CV 475-221 (T.8/24/77, p.36).

IN ALL, four hearings were held on the following dates: August 4, 1977, as to all cases CA 3092 and 475-221 and CV 477-80.

Mr. Ralph Snow, Attorney for Petitioner, in CV 477-80, was present and requested the Court to consider the application for disqualification of recusal and the Court overruled the motion (T.8/24/77 p. 3). Mr. Snow retired and the cases procede in CA 3092 and CV 475-221, Petitioner submitted several exhibits and evidence and the Government submitted an offer of 55 ft. of the property to Diamond. The offer was refused (T. 8/24/77 p.16-17) and the Case was continued.

September 30, 1977 Hearing, neither the Government nor the State of Georgia was present. The Court agreed to a hearing on January 3, 1978, WHEREAS, Petitioner submitted a total of 28 exhibits and evidence, accepted by the Court and without objections of the Respondents.

On August 2, 1978, the Court issued orders and Judgment denying all Petitioner's motions in CA 3092 and CV 475-221 (App. 9, 10a) No Final Judgment issued, in regards to CA 3092.

The Judgment for the U.S. and the Corps of Engineers (App. 10(a) in CV 475-221. On August 22, 1978, appeal was filed with the Court of Appeals Fifth Circuit.

In CV 477-80, a hearing was held on May 10, 1978. The Court admitted to having vacated the Judgment and granted a new trial in CA 3092 (t. p. 86) all facets of conspiracy, fraud and perjury were submitted to the Court.

The Court issued a summary Judgment in CV 477-80 on July 20, 1979 (App. 12(a)

Notice of Appeal filed on July 20, 1979, Petitioner filed a motion to consolidate 78-2969 with 79-2942 for Oral Argument scheduled for March 31, 1980. Court of Appeals granted consolidation February 6, 1980.

Petitioner filed request for one (1) hour Oral Argument. Three (3) cases cannot be argued in 20 minutes and to show all the evidence Petition requested. One hour Oral Argument was denied on February 15, 1980. The Court of Appeals on April 28, 1980 (App. 16, 17(a) affirmed all three (3) cases based on U.S. v. Diamond, 512 F.2d.157. A vacated judgment.

The Court allowed the dock and walkway of 40 feet to be repaired and maintained under a previously authorized permit (App. 16(a). Petitioner petitioned for rehearing. The Court of Appeals denied petitioner motion on May 23, 1980.

On April 28, 1980, Respondent U.S. Government, petitioned for rehearing and clarification was issued (App. 18(a).

Petitioner filed motion for Stay of Mandate on May 30, 1980. Petitioner filed notice of Writ of Certiorari to the Court of Appeals, Fifth Circuit, May 23, 1980.

On July 17, 1980, Petitioner filed with the District Court motion to dismiss CA 3092 for lack of prosecution, pursuant to F.R.C.P., Rule 41(2) or local Rule 15, the Alternative demand for jury trial, pursuant to F.R.C.P., Rule 38.

ARGUMENT

The right of the states to control and regulate its traffic along the State and federal hyways is unquestionable, therefore waters within its boundries must be given that same right,whether it be navigable or not, so long as it operates within it's own limits. It's waters are its territory and domain as much as the land and hyways within and equally subject to it's laws in all respects with in its own jurisdiction, that of a sovereign over its domain.

The right of Congress to regulate commerce. The correct definition commerce is the transportation and sale of of commodities and not to regulate the rights of a states citizens to the use of their

land or Riparian rights as granted by the states,. Congress has passed no laws to deny these rights pursuant to 33 U.S.C.§ 1, (app 13 a) 33 U.S.C.§ 403 and other similar regulations are ambigious and these permit regulations are interpreted in many different ways by many courts,.

The 33 C.F.R. 209260 (k)(1)(ii) Shoreward limit of jurisdiction, to the Mean Average High Water, preferable over a period of 18.6 years (app 13 a) This regulation in it's self is ambigious and requires many interpretations in areas of small rivers creeks and lakes within a states sovereign boundries that violates Article 10 of the U.S.Constitution and a taking of private property without due compensation, Art 5.

This Honorable Court has rendered it's opinion in OREGON v.CORVALLIS SAND AND GRAVEL CO. 50 L.ED 2d 550, 97 S.Ct 582 (1977) that State laws govern state owned river beds within it's boundries,

Shively v. Bowley, 152 U.S. 33 and
Kenyon v. Knife 46 Fed 313 (app B)

Many States have made Compacts with the federal government, such as the 1802 Compact with the State of Georgia. (app 1a)
published in Gale and Seaton 1832. No.69 Cession of Georgia. page 125,126.

pursuant to Article 4, New States admitted and Article 6, Constitution and Treaties as the Supreme law of the land, (app 19a) and all Judges shall be bound thereby.

The State of Georgia has riparian rights. State Constitution Art 1 sec 6 para.1 (app 14 a)

THIS HONORABLE COURT, must in all fairness to the state sovereignty and it's citizens render it's opinion and set to rest all court issues and Federal Agency regulation that violate Article 4 and 6 and deny equal protection under the law to the citizens, by declaring, State Riparian Rights are determined by STATE LAW.

2. Pursuant to Title 28 U.S.C.§ 144, petitioner filed timely affidavits to recuse the Late Honorable Judge Alexander Lawrence to disqualify himself from the cases, On two occassions he overruled from the bench, As he stated in a hearing held August 24,1977, ' I did once and I will do it again.' (T. p.2.3) Objections and exceptions are taken to the ruling.

The Court also accused petitioner of being a 'Chronic Litigator and his statement was released to the news and the papers made a big splash of petitioner and held him up to ridicule. (R.p. 92)

The Honorable Judge Lawrence wrote and published many stories about marshes, and protective in that repect.

When Judge Lawrence retired,The U.S. Attorney General, The Honorable Griffen Bell; sponsored a banquiet honoring his services as Judge.

The local papers gave a resume, and gave a history of their services.The Att-General was a retired Appellate Court Judge of the Fifth Circuit and his son, Griffen Bell Jr. was Judge Lawrence's law clerk

for 2 1/2 years, This would be a violat- of Judicial Ethics, personal interest.

Judge Griffin Bell was the presiding judge in the Court of Appeal in petioners Case. U.S. v. Diamond 512 F. 2d 157. The statement, That petioners property would have been inundated had it not been filled by comparing the marshlands adjoining property,when no evidence was submitted to show any fill was placed below the Mean High Tides , .an assumption speculative at the best and quite erron= ious pursuant to F.R.CP. Rule 52 (a). Crow Pope Land Inc v. U.S,474 F 2d 200

NRDC v. CALLAWY,392 F Supp 686.687.

2. Navigable Waters (key 35)
Secretary of the Army and the Chief of the Army Corps of Engineers are without authority to amend or change statutory definition of navigable water as used in the Water Act.etc.
[2] have acted unlawfully in adopting the definition of navigable waters in 33 CFR 209260.

1. Revoke and recind much of Federal Register 39 (April 3,1974.etc.

Complaint refers to marshlands adjoing navigable waters, para.3, (app4a)

3. The District Court upon motion from the Government ordered a new trial by Consolidation with CV 475-221, pursuant to F.R.C.P. Rule 42 (a) on December 4,1975.

The Government, Attorney Mr.Lamar Walter

the complaintee,was replaced by Mr. Edward Booth Jr. The lower court in Savannah and Chief Justice Judge Brown of the Fifth Circuit had reprimanded Mr. Lamar Walters for prosicutional misconduct .He is no longer with the U.S. Justice Department.

The three cases were heard on four hearings, August 24,1977, September 30, 1977, January 3,1978 and May 10,1979.

The District Court rendered his orders on August 2,1978 in Ca 3092 and CV 475-221.

Denied all motions of petitinor in CA 3092 and CV 475-221. (app 10,11a) NO FINAL JUDGMENT ISSUED.

Issued a judgment for CV 475-221 in U.S. and Corps of Engineers. (app 9,10a)

Summary Judgment was issued in July 20,1979 in CV 477-80. (app 12a)

The petitioner appealed all cases and were heard on oral argument as of March 30,1980, whereas petitioner appealed the Court of Appeal affirmation subject to modification and removed the dock and walkway from a judgment that had been vacated and no final judgment was re-issued, Petitioner requested a rehearing and clarification,denied,April 28,1980,

The Government requested a rehearing and the Court of appeals changed the words to again reinstate the old vacated judgment on May 23,1980, (app 17,18a)Petitioner

requested a rehearing, Clarification

and recall of mandate, Petitioner had requested to withold mandate, as CA 3092 was in the District Court and petitioner had petitioned for a dismissal or a jury trial, on June 17,1980.

The mandate denies petitioner due process and equal protection and where they have no jurisdiction where no final appealable Judgment was issued.

Consolidation of the cases requires a new judgment for each case and each case retains its own rights.

Johnson v.Manhattan Ry Co. 289 U S 479, 77 L ed 1332 [Courts,586-4]

Mutual Life Insurance Co. v. Hillmon 145 U S 709,710 36 L ED 2d (1891) stated,

Although the defendants might lawfully be compelled at the discretion of the court to try the cases together, the causes of action remain distinct, and no defendant could be deprived without consent of any rights, material to his defense whether by of challenges of jurors objection to evidence, which would have been entitled ifthe cases had been tried seperately (app B rh)

The District Court stated in hearing May 10, 1979, that he had granted a new trial and vacated the judgment, (T.p.86)

28 U S C § 1652, State laws as rules of decisions, GA. Code 70-401 (app 15a)

The district court denied all of petitioner's motions for , F.R.C.P. Rule 60 (b) 3,4,6, That the Court had no jurisdiction over petitioner or his property, FRAUD, that the evendence was fraudulently obtained and that what relief the court could grant.

Petitioner for Rule 34 and the Freedom of Information Act 5 U S C § 552,

Demanded a jury trial or summary judgment.

Requested Jurisdictional Survey as to Army Corps of Engineers Authority.

Petitioned for Recusal of the Judge.

All motions denied August 2 1978 (app 10,11 a) 2 years after consolidation in CA 3092 and CV 475-221.

These denial violates petitioners rights to due process and Equal protection and right to a jury trial, pursuant to Article 4,5, and 7,14 of the Constitution.

The State of Georgia had intervened in the old case, but upon consolidation had not petioned to Intervene, as the states case in the Arrest of petitioner Diamond by Dr Marland was adjudicated in the States Superior Court of Chatham County on January 22, 1974, by a jury of 12 and found 'NOT GUILTY for filling any marsh area as charged, April 4,1973, wheras the District Court was made aware of the verdict before he ordered his judgment on April 17 1974.

The States case was Resi Juda Cata Sitton v. United States 413 F 2d 1386 (5 cir) and the State has no jurisdiction in federal courts when there was no appeal in the states higher courts.

The hearings were held, and submitted several exhibits August 24,1977 on September 30 ,1977 Hearings the state and Government made no appearance, The court allowed for another hearing on January 3,1978, when a total of 28 exhibits were admitted without any objection by the government.

Most of the exhibits were copies of the records held by the Engineers and they clearly indicated that perjury and fraud and conspiracy did prevail and obvious why they were relunctent to issue these copies, and further copies were supplied but to late to submit to the court.

IF THIS HONORABLE COURT WILL REVIEW THE FOUR SHORT TRANSCRIPTS WHERE ALL THE EXHIBITS WERE EXPLAINED IN DETAIL AND CITATION WITH REVIEW OF THE EXHIBITS THIS WILL ESTABLISH FULL PROOF THAT PETITIONER HAS SUFFICIENT PROOF TO GRANT A JURY TRIAL

The April 17,1976 hearing where only the District Engineer Colonel Kaiser was allowed to testify,as he was being sent overseas,

His testimony was that no survey was made as to jurisdiction (T p15,16) and he had not made any survey as to meet

jurisdictional requirements for the requirement of a permit, pursuant to 33 C.F.R. 209260 (k)(1)(ii) (app 13a) as to the mean High tides over a period of 18.6 years,(T p.15-18)

That the topo and survey used as evidence in the original case, was not placed in the right position to show the true position of the property of petitioner. The property was show as being in the marsh area of Mr. Barretts lot.(T.pp 19-24) He also verified that he had not been show petitioners registered survey that verified the testimony of the two witnesses that the property was high fast land and sandy soil.

The Colonel Kaiser's testimony along with the evidence obtained in the copies of petitioners records from the F.O.I,A, 5 U.S.C.§ 552 from the engineers that Mr Young who testified as to Jurisdiction Tidal elevations,there were no records of reports as required to show that he had been where he said he was and no report as to tidal records of Richardson Creek. as verified by Colonel Kaiser's testimony.

Colonel Kaiser, further stated that certain jurisdictional facts were witheld from petitioner. (T. p 6 - 4/17/76)

F.R.C.P. Rule 60 (b) (3)(4)(6) is well substanciated by the testimony and exhibits.

The photo taken by Dr. Marland of the marshland adjoining the property taken on June 28,1973, whereas the tidal information was reported at 7.1 feet, was verified by the U.S.Departmrnt of Commerce as being 8.9 feet,well above Jurisdictional regulations.

The lower court would not allow petitioner to recall the witneses in the new trial, whereas the Government witness Colonel Kaiser was allowed to testify on behalf of the U.S.Army Corps of Engineers.

Denial of due process requires the Court to divest itself of jurisdiction over the person of a defendant where such jurisdiction has been acquired as a result of governments deliberate, unnecessary and unreasonable invasion accused's constitutional rights.

U.S. v. Toscanino, 500 F 2d 267, rehearing denied, 504 F 2d 1380 on remand.

Supression of evidence, Brady v. Maryland 22 A L R Fed. 556

- Phiilips v. Crown Central Petroleum Corp, 556 F 2d 702, injunction vacated

U. S. v. Moss-American, Inc. 78 F.R.D. 214. case dismissed.

U.S. v. Kane, 602 F2d 490-494 Fraud and states rights

Hazel-Atlass Glass Co. v. Hartford-Empire Co, 322 U S 246,248, 88 L Ed 1265.
United States v. Property on Pinto Is. 74 F. Supp 92,93

Navigable Waters, 42 (1).
Riparian Rights of owners of Marsh Is. bounded by mobile Bay were governed by state law.

Crow, Pope, and Land Enterprise,v.U S 474 F.2d 200

405 (12.23) impermissable conclusion of law based on total absence of evidence.

Civil Complaint 3092, was consolidated by order of the Court, as of December 4, 1975, Thereby vacating the old Permenant Injunction, and a new verdict or judgment must issue, No Judgment has been issued and the case is still pending in the lower court, the Judge of the District Court (T. p. 86- 5/10/79) the judgment I made and set aside, is JUDICIAL NOTICE.

The Civil complaint was filed by Mr.Lamar Walter, U.S. Assistant District Attorney for the Southern District of Georgia, on April 5,1973, (app 4-7a) for a criminal violation, of 33 U.S.C.§ 403,407. $500 dollars fine or 6 months in jail. Mr. Walters filed the complaint in the name of the United States government jurisdiction invoked 28 U.S.C§1345, Except as otherwise provided by law:

seeking a permenant injunction and damages, Petioner demurred and filed a cross complaint for damages.

Mr. Walters, prosecuted his own complaint.

The personal unsworn complaint without affidavit, violates Art. 4 of the Constution, as to search and siezures, and without statutory authority of law and without jurisdiction,

United States v. St Regis Paper Co. 355 F 2d 688,689. Except as otherwise provided by law, the complaint has no jurisdiction. U.S. v. Morin(DC Ind) 1866. Federal Case No. 15,654, No injunction

shall issue which had not been adjudicated.
Cohen v. U.S. v. 38 App.DC 123.
no affidavit, no jurisdiction.
74 AM JUR 2d. TORTS § 37 unauthorized prosecution in the name of another.(ARB)

Since December 4,1975, the complaintee has since left the Federal Governments service, and The Government has not submitted any evidence or testimony to prosecute the petitioner, and as June 17,1980 Petitioner has filed a motion to dismiss or a jury trial.

The Secretary of the Army, has published in the Federal Register as of 25 July 1975, Final regulations with an order of the U.S.District Court for the District of Columbia issued on March 27, 1975 in NRDC v. CALLAWAY, et al. 392 F. Supp 686, All fill was grandfathered.

This is part of the information witheld.

Therefore this complaint becomes,Void, EXPOST FACTO. and should be dismissed.

The 1802 Compact between the Federal Government and the State of Georgia takes jurisdiction over the complaint and grant immunity to Petitioner. MISSISSIPPI v. JOHNSON,18 L Ed 475,71 U S 439, These agreements are Irrevocable and Unalterable.

CHEROKEE NATIONS v. THE STATE OF GEORGIA
8 L Ed 2d Peter 5 106 U S 41.
The 18o2 Compact grants Georgia it's full Sovereignty.

4.Court of Appeals has affirmed all three cases,with some modification as to the dock and walkway,Since no final judgment in CA 3092,.The Court has no jurisdiction to make

a final decision for the District Court,

The affirmation of all three cases on a vacated judgment in the old case and where new issues are submitted, therefore these cases must be reviewed on their own merits, to deny petitioner due process and equal protection would violate the 4 th and 14 th Articles of the Constitution.

The modification of the Court of Appeals opinion as to Dock and Walkways by old permit but the additional wording as to fill would in essence issue a new judgment not authorized by the Constitution, since the courts are only Courts of review. (app 16,17,18a)

Consolidation pusuant to C.F.R.P Rule 42 (a) Court order (app 8a)

Judgment in CA 3092 denying all motions (10,11a)

The 1802 Compact of the Federal Government, (1,2,3a) as recorded in the Book of Public Lands, p.125,126 by Gale and Seaton (1832).

When a civil rights action and a tort case for damages is denied petitioner for Constitutional violations and denial of a jury trial and when the Court of Appeals Fifth Circuit and the District Court depart from accepted and usual course of judicial procedure, This Honorable Court must exercise supervision to uphold and protect its citizens.

When an unauthorized without jurisdiction Complaint is filed by a Government agent,who secures several other agents to testify falsely and to induce altered and hearsay evidence to secure a fraudulent permenant injunction over a persons property to deny him the rights to enjoy use and protect to take without just compensation for seven years and more and did not use the machinery that the law provided for the prosecution forwhich the would be violation provided for, constitutes a malicious abuse of legal process,

Whereas the district court grants a new trial and allows the government witness to testify and refuses to grant petitioner the same rights and after 5 years has not issued a final judgment so as to restrain petitioner from the use of private property and ignores the constitutional rights of the individual . Case CA 3092 must be dismissed, Case CV475-221 as for requirement of a permit without jurisdiction, must be held liable for all damages, For just compensation, Tresspass.

Case 79-2942, Whereas the case of Conspiracy,Fraud and perjury can only be proven by facts, therefore this case must be returned for trial as guaranteed by the Constitution.

The Court of Appeals fifth circuit has violated its jurisdictional rights to issue a mandate where no final judgment was issued, and to affirm their mandate by a vacated judgment that mutes the or-

original verdict and decision of the Court of Appeals in April of 1975, the District Court having granted a new trial in December of 1975 supercedes the old verdicte, therefore must vacate their mandate.

The Secretary of the Army and the Chief of the Army Corps of Engineers are without authority to amend or change statutory definition of navigable waters as used in the water Act and they acted unlawfully and in dergation of their responsabilities.

NRDC v.CALLAWY, 392 F. Supp 685 (1975_

U.S. Constitution Art.1,§8,cl 3.

Whereby the Secretary of the Army issued Federal Register, 25 July 1975 by Court order, which included, Grand-Father clause, where permits would not be required, for Marshlands or Wetlands as they are referred too. This includes Petitioner property from a permit, although the property was high fast land.

This Honorable Court must settle the question of"Riparian Rights" pursuant to State law, as in Oregon v. Corvallis.

For the above stated reasons,Petitioner request's this Honorable Court issue a writ of Certiorari.

Respectfully Submitted

Herman Diamond

Herman Diamond, pro se
3610 Macceo Dr.
Savannah, Ga. 31410
Phone (912) 897-2442

APPENDIX

7th Congress] [1st Session

No. 69

GEORGIA CESSION

Communicated to Congress, April 26, 1802
(American State Papers, Public Lands.
page 125, Gale & Seaton (1832)

Gentlemen of the Senate and the
House of Representatives:

In pursuance of the act entitled, "An act supplemental to the act, entitled An act for an amicable settlement of the limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi territory," James Madison, Secretary of State, Albert Gallatin, Secretary of the Treasury, and Levi Lincoln, Attorney General of the United States, were appointed commissioners to settle, by compromise, with the commissioners appointed by the State of Georgia, the claims and cession to which the said act has relation.

Articles of agreement and cession have accordingly been entered into, and signed by the said commissioners of the United States and of Georgia; which, as they leave a right to Congress to act upon them legislatively at any time within six months after their date, I have thought it my duty immediately to communicate to the Legislature.

TH: JEFFERSON

April 26, 1802.

City of Washington, April 26, 1802.

Sir:

We have the honor to enclose a copy of an agreement entered into between the commissioners of the United States and those of Georgia in pursuance of the act, entitled, "An act supplemental to the act, entitled An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi territory."

The nature and importance of the transaction have induced the insertion of a clause which renders it necessary that the subject should be communicated to Congress, during their present session.

We have the honor to be, very respectfully, sir, your obedient servants,

JAMES MADISON,
ALBERT GALLATIN,
LEVI LINCOLN.

The President of the United States.

ART. II. The United States accept the cession above mentioned, and on the conditions therein expressed: and they cede to the State of Georgia whatever claim, right, or title, they may have to the jurisdiction or soil of any lands lying within the United States, and out

of the proper boundaries of any other State, and situated south of the southern boundaries of the States of Tennessee, North Carolina, and South Carolina, and east of the boundary line hereinabove described, as the eastern boundary of the territory ceded by Georgia to the United States.

In faith whereof the respective commissioners have signed these presents and affixed hereunto their seals.

Done at the city of Washington, in the District of Columbia, this twenty-fourth day of April, one thousand eight hundred and two.

JAMES MADISON, [L.S.]
ALBERT GALLATIN, [L.S.]
LEVI LINCOLN, [L.S.]
Commissioners on the part of the United States.

JAMES JACKSON, [L.S.]
ABRAH. BALDWIN, [L.S.]
JOHN MILLEDGE, [L.S.]
Commissioners on the part of the State of Georgia.

J. Franklin, Senator of the United States for North Carolina,
Samuel A. Otis, Secretary of the Senate of the United States,
John Beckley, Clerk of the House of Representatives of the United States.
) Witnesses

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

United States of America, Plaintiff,	)	
v.	)	CIVIL ACTION
Herman Diamond, Defendant.	)	NO. 3092

C O M P L A I N T

NOW COMES the Plaintiff, United States of America, by and through its undersigned counsel, and complaining of the Defendant, HERMAN DIAMOND, alleges and says as follows:

1. This Honorable Court has jurisdiction over this cause ofaction by virtue of the fact that the United States of America is the plaintiff herein (Title 28, United States Code, Section 1345).

2. The defendant is an individual residing and living within the Southern District of Georgia.

3. On April 4, 1973, and at times unknown to the plaintiff, and prior thereto, and continuing through until the present time, the defendant and others acting as agents of said defendant jointly and severally undertook the fill of estuarine marshlands within the

navigable waters of the United States in a marsh adjacent to Richardson Creek, Oatland Island, Chatham County, Georgia; and thereby threw, discharged, deposited, caused to be deposited, procured to be thrown, and suffered to be deposited from the shore, within the navigable waters of the United States, refuse, which includes but is not limited to the following: roots or stumps, broken concrete, construction materials, and dirt, in violation of the provisions of Title 33 United States Code, Section 407; and further, defendant has created an obstruction to navigation within the navigable waters of the United States, to wit: the estuarine marshlands adjacent to Richardson Creek, Oatland Island, the said obstruction not being affirmatively authorized by Congress and, therefore, prohibited by and in violation of Title 33, United States Code, Section 403.

4. No Department of the Army permit for dumping of fill within the navigable waters of Richardson Creek, Oatland Island, has been issued to the defendant. Defendant has not applied for said permit.

5. Upon information and belief, it is alleged that the defendant has not ceased the said depositing of refuse within the navigable waters of the United States.

6. The said refuse now lying within the estuarine marshlands of the United States is and represents an irreparable damage and harm to the plaintiff and to the people of the United States.

7. The said deposit of refuse within the navigable waters of the United States, if allowed to remain, will further impair and destroy the navigable waters of Richardson Creek, Oatland Island.

8. Unless defendant, HERMAN DIAMOND, and his agents are restrained from further depositing of refuse within the navigable waters of the United States the same will continue in their efforts to complete the unauthorized land fill operation.

WHEREFORE, the plaintiff prays to the Court:

1. That a permanent Injunction issue to restrain and enjoin the defendant from further depositing or dumping of refuse of any kind within the navigable waters of the United States, particularly in the marshlands of Richardson Creek, Oatland Island, Chatham County, Georgia, the said dumping or depositing of refuse being in direct violation of the laws of the United States; and

2. That an Order issue mandatorily compelling the defendant to remove the said refuse heretofore deposited within

the navigable waters of the United States in said area; or

3. In the alternative, that the Court award damages to the plaintiff, both compensatory and punitive, along with the costs of this action, and such other and further relief as the Court may deem just, reasonable, and proper.

Lamar C. Walter
Assistant United States Attorney

Address:

P. O. Box 8999
Savannah, Georgia 31402

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

Herman Diamond, Plaintiff, v. United States of America and United States Army Corps of Engineers, Savannah District, Defendants,	CIVIL ACTION NO. 475-221

O R D E R

The defendants have filed a motion to consolidate the above action with Civil Action Number 3092, United States v. Herman Diamond, now pending before this Court. The Court having read and considered the motion is of the opinion that consolidation is proper under Rule 42 (a) of the Federal Rules of Civil Procedure. Accordingly, and for good cause thus appearing, it is,

ORDERED, ADJUDGED, and DECREED that Civil Action Number 475-221, Herman Diamond v. United States of America and United States Army Corps of Engineers, Savannah District, be and the same is

hereby consolidated with Civil Action Number 3092, United States v. Herman Diamond.

This 4th day of December, 1975.

Alexander A. Lawrence
Chief Judge, United States
District Court, Southern
District of Georgia

UNITED STATES DISTRICT COURT
For the
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

Civil Action File No. CV475-221

HERMAND DIAMOND	]	
	]	
vs.	]	
	]	
UNITED STATES OF AMERICA	]	JUDGMENT
AND UNITED STATES ARMY	]	
CORPS OF ENGINEERS,	]	
SAVANNAH DISTRICT	]	

This action came on for (hearing) before the Court, Honorable Alexander A. Lawrence, United States District Judge, presiding, and the issues having been duly (heard) and a decision haing been duly rendered.

It is Ordered and Adjudged that in accordance with such decision Judgment is hereby rendered in favor of the Defendants, UNITED STATES OF AMERICA AND UNITED STATES ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT, and against the Plaintiff, HERMAN DIAMOND.

Dated at Savannah, Georgia, this 2nd day of August, 1978.

Louis E. Aenchbacher
Clerk of Court

By: Michael M. Aarrett
Deputy Clerk

UNITED STATES DISTRICT COURT
For the
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

Civil Action File No. 3092

UNITED STATES OF AMERICA]
vs.] JUDGMENT
HERMAN DIAMOND]

This action came on for (hearing) before the Court, Honorable Alexander A. Lawrence, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that in accordance with such decision Diamond's various motions pending in Civil Action No. 3092 and CV475-221 are overruled.

Dated at Savannah, Georgia, this 2nd day of August, 1978.

Louis E. Aenchbacher
Clerk of Court

By: Michael M. Aarrett
Deputy Clerk

UNITED STATES DISTRICT COURT
For the
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

Civil Action File No. CV477-80

HERMAN DIAMOND

vs.

DR. FREDERICK C. MARLAND, Department of Natural Resources, State of Georgia; COLONEL EDWIN C. KEISER, District Engineer; COLONEL FRANK WALTER, District Engineer: STEVEN OSVALD, Permit Section, Engineers; WILLIAM L. YOUNG, Engineer; EDWARD MYATT, Engineer: GLENN F. MACAULEY, of the United States Corps of Engineers, Savannah, Georgia, District

This action came on for (hearing) before the Court, Honorable Alexander A. Lawrence, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that in accordance with such decision the Defendants' motions for summary judgment are granted and the conspiracy action is hereby dismissed.

Dated at Savannah, Georgia, this 20th day of July, 1979.

HENRY R. CRUMLEY,JR.
Clerk of Court

Title 33 U.S.C. Sec. 1

REGULATIONS BY SECRETARY OF THE ARMY FOR NAVIGATION OF WATERS GENERALLY

It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his judgment the public necessity may require for the protection of life and property, or of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. Such regulations shall be posted, in conspicuous and appropriate places, for the information of the public.

CODE OF FEDERAL REGULATIONS (1973)

§209.260(K)(1)(ii). (p.362) Shoreward limit of jurisdiction. Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water.

Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years.

LAWS OF THE STATE OF GEORGIA

85-1308. Rights of owners of land adjacent - to navigable tidewaters. --

For all purposes ..... the boundaries and rights of owners of land adjacent to or covered in whole or in part by navigable tidewaters, as defined in the preceding section, shall extend to low water mark in the bed of the water. Provided however, that nothing in this and the two preceding sections shall be so construed as to authorize such an exclusive appropriation of any tidewater, navigable or nonnavigable, by any person whomsoever, as to prevent the free use of the same by others, for purposes of passage and for the transportation of such freights as may be capable of being carried thereover. (Acts 1902, p. 108)

85-1310. Levees and ditches; construction authorized. -- All persons owning, or who may hereafter own, lands on any watercourses are authorized and empowered to ditch and embank their lands, so as to protect the same from freshets and overflows in said watercourses: Provided always, that the said ditching and embanking does not divert said watercourse from its ordinary channel.

GEORGIA STATE CONSTITUTION
Art. 1, Sec. 6, Par. 1

Tidewater titles: confirmed. The Act of the General Assembly approved December 16, 1902, which extends the title of ownership of lands abutting on tidal water to low water mark is hereby ratified and confirmed.

LAWS OF THE STATE OF GEORGIA

70-401. Time of new trial. - When a new trial has been granted by the superior court, the case shall stand on the docket for trial at the next term as though no trial had been had, subject to the Rules for continuances provided in this Code.

105-1401. Interfering with enjoyment of private property. - The right of enjoyment of private property being an absolute right of every citizen, every act or another which unlawfully interferes with such enjoyment is a tort for which an action shall lie.

105-1402. Right of possession. - The bare right to possession of lands shall authorize their recovery by the owner of such right, and also damages for the withholding of the right.

105-1406. Damages for continuing trespass. - Damages for a continuing trespass are limited to those which have occurred before action is commenced. Subsequent damages flowing from a continuance of the trespass give a new cause of action.

105-1409. Rights above and below the surface. - The owner of realty having title downwards and upwards indefinitely, an unlawful interference with his rights, below or above the surface, alike gives him a right of action.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Nos. 78-2969 and
79-2942

DO NOT
PUBLISH

UNITED STATES OF AMERICA and
STATE OF GEORGIA,
Plaintiffs-Appellees,

versus

HERMAN DIAMOND,
Defendant-Appellant.

* * * * * * * * * * *

HERMAN DIAMOND,
Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA and
UNITED STATES ARMY CORPS OF
ENGINEERS, Savannah District,
Defendants-Appellees.

HERMAN DIAMOND,
Plaintiff-Appellant,

versus

DR. FREDERICK C. MARLAND,
Dept. of Natural Resources,
State of Georgia, ET AL,
Defendants-Appellees.

(continued)

Appeals from the United States District Court for the Southern District of Georgia

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[April 28, 1980]

Before GOLDBERG, CHARLES CLARK and THOMAS A. CLARK, Circuit Judges.

PER CURIAM:

The Court finds that the appellant, HERMAN DIAMOND, has the right to rebuild or repair and to maintain a dock and walkway at the same location the original dock and walkway were authorized and built under a previously issued United States Army Corps of Engineers permit, and finds that no addition or removal of fill material on any part of the lands owned by Diamond in the Richardson Creek area is to be required or permitted in connection with any rebuilding, repair or maintenance of such dock and walkway. We therefore affirm.[1] See Local Rule 21.[2]

AFFIRMED.

(continued)

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[1] United States v. Diamond, 512 F.2d 157 (5th Cir.), cert. denied, 423 U.S.928 (1975).

[2] See N.L.R.B. v. Amalgamated Clothing Workers of America, 430 F.2d 966 (5th Cir.) 1970.

Appellees' petition for clarification of the Court's opinion entered on April 28, 1980, is granted.

The preceding sentence in our original opinion is deleted and the sentence set out below is substituted therefor:

The court finds that the appellant, HERMAND DIAMOND, has the right to rebuild or repair and to maintain a dock and walkway at the same location the original dock and walkway were authorized and built under a previously issued United States Corps of Engineers permit, provided however, the right to rebuild or repair and to maintain the previously authorized dock and walkway does not include the right to place additional fill material on any part of the lands owned by Diamond in the Richardson Creek area.

15-101. BOUNDARIES OF THE STATE. - The boundaries of Georgia as deduced from the Constitution of Beaufort, the Articles of Cession and Agreement with the United States of America entered into on the 24th of April 1802.

15-201. EXTENT OF SOVEREIGNTY AND JURISDICTION. The sovereignty and jurisdiction of this State extend to all places within the limits of her boundaries, except so far as she has voluntarily ceded the same to the United States or adjacent States over particular localities.

ARTICLES OF THE CONSTITUTION

Art. 4. Sec. 3. Parg. 1:

New States Admitted. New states may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Art. 6. Sec. 1. Parg. 2:

Constitution and Treaties as the Supreme Law. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

VACATED JUDGMENT IN CA 3092

United States District Court
Southern District of Georgia
Savannah Division

United States of America	]	
v.	]	Civil No. 3092
Herman Diamond	]	

JUDGMENT

This cause came on to be heard on the complaint of the United States of America, plaintiff, and the Court having heard oral evidence and admitted exhibits in open court and the Court having entered its findings of fact and conclusions of law on April 17, 1974, and it further appearing to the court that the defendant is committing acts and is about to commit acts as set forth in plaintiff's complaint, and will continue to do so unless restrained by order of this court, and that the said acts have caused irreparable injury and damage to the marshlands described in the complaint and that immediate and irreparable injury, loss or damage to the described area will result and that the activities described in the complaint have been conducted by Herman Diamond without a permit from the Secretary of Army as required by 33 U.S.C. Section 403, and are in direct violation of the laws of the United States. (con't.)

IT IS ORDERED, ADJUDGED AND DECREED that the defendant, Herman Diamond, his servants, agents, employees, attorneys, successors, and assigns, and each of them, be permanently enjoined and restrained from engaging in or permitting suffering, or causing, directly or indirectly, any fill or construction operations on the area in dispute, bounded on the north by Richardson Creek and on the south by Oatland Island Road, Chatham County, Georgia.

This 17th day of April, 1974.

Alexander A. Lawrence
Chief Judge,
United States District
Court